



**IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL**

Civil Misc. Writ Petition No. 93 of 2014

(Under Article 226 of the Constitution of India)

Yukti Constructions Pvt. Ltd. Writ Petitioner

versus

State of Uttarakhand and others Respondents

Mr. Sharad Sharma, Senior Advocate, assisted by Mr. Pradeep Chamyal and Ms. Vandana Singh, Advocates, present for the petitioner/applicant.

Mr. U.K.Uniyal, Advocate General, assisted by Mr. Subhash Upadhyay, Chief Standing Counsel and Mr. Sandeep Kothari, Brief Holder, present for the State.

U.C. Dhyani, J. (Oral)

1. The petitioner has moved present writ petition for the following reliefs:

- (i) issue a suitable writ, order or direction in the nature of certiorari quashing the notifications under Section 4 and 6 of the Land Acquisition Act, issued on 12.09.1987 and 30.01.1988 (Annexure P-1).
- (ii) issue a suitable writ, order or direction in the nature of certiorari quashing the orders of the Collector/District Magistrate, Dehradun, dated 11.03.2013 and 22.04.2013 (Annexure Nos. 17 and 16 respectively, to this writ petition).
- (iii) issue a suitable writ, order or direction in the nature of mandamus directing the respondents not to dispossess the petitioner from plots bearing *khewat* No. 1 and *hasras* included in it



situated in village Rikholi, Paragana Pachwadun, Tehsil and District Dehradun, having total area of 187.4890 hectares equivalent to 491 Acres.

- (iv) issue any other suitable writ, order or direction, which this Hon'ble Court may deem just and proper in the facts and circumstances of the case and in the interest of justice.
- (v) Award cost of petition to the petitioner.

2. The petitioner has also filed an interim application (being IA No. 3553 of 2014) with the prayer to restrain the respondents from taking any further steps with respect to the land in question.
3. Paras no. 6 & 7 of the affidavit enclosed with IA No. 3553 of 2014 are reproduced herein below for ready reference:

6. That it is submitted that during this period the officials of the respondents are continuously trespassing the land in question and the petitioner fears that the respondents are about to proceed with some activity or with the process of taking over actual physical possession of the land in question. This exercise, if done, may render the present petition infructuous/academic.

7. That the petitioner/applicant has a very good *prima facie* case on merits and in all likelihood are going to succeed in the said petition. The balance of convenience is also in favour of the petitioner/applicant and against the respondents. Moreover, grave harm and prejudice and that too irreparable in nature would be caused to the petitioner/applicant if the interim reliefs as prayed for are not granted.



4. Counter affidavit filed on behalf of the respondent in the Court today is taken on record.
5. Notification issued under Section 4 of the Land Acquisition Act, 1894, (annexure-1 to the writ petition) was issued way back in the year 1987 (to be precise, on 21.09.1987). The details of the land, then sought to be acquired, are as follows:

District	Paragana	Village	Name of the Estate	Approximate Area
Dehradun	Pachhwadun	Mussoorie	Park Estate (Sir George Everest House) <i>North:</i> Park Estate Leopard Cottage Estate <i>South:</i> Park Estate and Lambidhar <i>East:</i> Snowdoon and Cart Secondi Mkenzie Road. <i>West:</i> Park Estate Land	172.91 acres

6. Learned Advocate General raised a preliminary objection that the notification, which was issued way back in the year 1987, is being assailed by the petitioner in the year 2014 at such a belated stage. To this, learned counsel for the petitioner placed a decision of Hon'ble Apex Court rendered in *Tukaram Kana Joshi and others vs. Maharashtra Industrial Development Corporation and others, (2013) 1 SCC 353*, to show that latches in



maintaining the writ petition are not absolute impediments in exercise of judicial discretion and rendering substantial justice. Learned Advocate General also submitted that the petitioner itself admits in the writ petition that the notification under Section 4 and 6 of the Land Acquisition Act were issued in relation to the land in question, petitioner ought to have filed appeal before the Divisional Commissioner for seeking second relief, and go before the civil court for seeking the third relief.

7. Be that as it may, the fact remains that in continuation of Government Notification dated 21.09.1987 issued under Sub-Section (1) of Section 4 and Sub-Section (4) of Section 17 of the Land Acquisition Act, 1894, the Governor of U.P. was pleased to declare under Section 6 of the said Act that the land mentioned in the Schedule appended to the notification dated January 30, 1988, is needed for a public purpose, namely, for the Development of Tourist place in District Dehradun and, under Section 7 of the said Act, directed Collector of Dehradun to take order for the acquisition of the said land. The Collector of Dehradun was also directed to take possession of the land mentioned in the schedule for the public purpose, keeping in view the urgency of the matter. The schedule describes the estate as Park Estate, Sir George Everest House admeasuring 172.91 acres.
8. Annexure-5 to the counter affidavit filed on behalf of respondents no. 2 & 3 is a copy of possession certificate to



indicate that the possession of the acquired land was taken by the department of Tourism on 03.06.1988.

9. Certified copy of the map dated 30.11.2002 indicates the position of *patta* no. 1298 to 1331, which fall within Mussoorie Municipality. As such, the documents show that the land was specifically earmarked, was preserved by boundary, the possession of which was already taken on behalf of SLAO and was handed over to the tourism department of the State.
10. An award under Section 11 of the Land Acquisition Act was passed in the year 1990. The persons, who were having some interest over the land, received compensation. The land was acquired by the State Government and is presently in possession of Tourist Department. The land, which was acquired, formed part of Nagar Palika Parishad, Mussoorie in the name of Park Estate.
11. According to the counter affidavit filed on behalf of respondents no. 2 & 3, the land forming Park Estate was acquired. The boundaries of Park Estate were given in the notification and it cannot, therefore, be said that the State Government has acquired an un-identifiable land.
12. It follows that the property situated within the municipal limits of Nagar Palika Parishad, Mussoorie, popularly known as Park Estate, George Everest House, is well defined, which land was acquired by the State



Government *vide* award dated 19.02.1990 as per the provisions of Land Acquisition Act, 1894. The said land was acquired by the State Government and was handed over to the Tourist Department, *vide* order dated 03.06.1988. In this way, the Tourism Department took possession over the said piece of land on 03.06.1988. Possession certificate enclosed with the counter affidavit of the State reveals the same. It is thus clear that the State Government is in possession of the land, which was acquired for tourist activities of the State. Park Estate, George Everest House is in possession of the Tourist Department and steps are being taken for establishing Dehardun-Mussoorie Rope Way and connected activities.

13. It is the categorical stand of the respondent-State that the sale-deed, which has been referred to by the petitioner is not the property, which is in possession of the respondent-State. Since the State Government is in actual physical possession over 172.91 acres of the defined land, there is, therefore, no question of granting interim relief to the petitioner. IA No. 3553 of 2014, therefore, fails and is dismissed.
14. As prayed, rejoinder affidavit may be filed on behalf of the petitioner within three weeks. List the petition thereafter.

(U.C. Dhyani, J.)
24.09.2014

